

NOV 18 2008

Agreement # \_\_\_\_\_

Sales Contracts Mgmt

## APPLE, INC.

## ITUNES U CONTENT/SERVICES AGREEMENT – U.S. DEPARTMENT OF COMMERCE

This Content/Services Agreement (the "**Agreement**"), effective as of the date both parties have signed the Agreement ("**Effective Date**"), is made and entered into by and between Apple, Inc., a corporation organized under the laws of the State of California with offices at 1 Infinite Loop, Cupertino, CA 95014 ("**Apple**"), and the following organization or entity executing this Agreement ("**Content Provider**"):

Name of Content Provider: U.S. Department of CommerceContent Provider Address: 1401 Constitution Avenue NW  
Room 5098  
Washington, DC 20230

Content Provider Contact Person for Notices and Approvals:

Print Name: Philip GreenePhone Number: 202-482-1268Email Address: pgreene@doc.gov

WHEREAS, Apple plans to host and run a service called "iTunes U" to enable Content Provider to make educational materials and other content available via Apple's iTunes software to members of the Content Provider's community and the general public;

WHEREAS, Apple plans to provide pre-designed templates and administrative tools to enable Content Provider to have its own Content Provider-branded site for browsing, searching, downloading, and uploading Content (as defined below);

WHEREAS, Content Provider will be able to determine what Content is made available and to control access to all Content based on its own policies, including, for example, limiting distribution to selected members of the Content Provider community by whatever criteria Content Provider specifies;

WHEREAS, the parties desire that Apple operate the iTunes U Site (as defined below) on the terms and conditions set forth herein; and

WHEREAS, the parties desire that Content Provider grant a license or sublicense to Apple to use and distribute Content on the iTunes U Site.

NOW, THEREFORE, in consideration of the mutual promises and conditions stated herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. DEFINITIONS.**

1.1 "**Apple Tools**" mean any guidelines, templates, APIs (application programming interfaces), software, documentation or other tools provided by Apple to assist or enable Content Provider to implement its own Content Provider-branded site for iTunes U.

1.2 "**Content**" means the audio, visual, textual, graphical, or other materials provided or posted by Content Provider for use on the iTunes U Site and/or the iTunes Store.

1.3 "**Information**" means all non-public information, customer and product information, procedures, systems, or data provided by the other party in connection with this Agreement.

1.4 "**iTunes Store**" means an online digital content download service owned and/or controlled by Apple or an affiliate of Apple, which is currently branded as the "iTunes Store."

1.5 "**iTunes U Site**" means the website hosted by Apple providing access to the Private Content and the Public Content, including all web pages and sub pages.

1.6 "**Marks**" mean Content Provider trademarks, service marks, logos and trade names.

1.7 "**Private Content**" means the Content accessible only through secure methods exclusively to persons affiliated with the Content Provider whose identities have been authenticated by the Content Provider and to whom the Content Provider otherwise has granted access to Private Content.

1.8 "**Public Content**" means the Content made available to the general public, but excluding any Private Content.

1.9 "**Content Provider Website**" means the web page on the Content Provider's primary website that provides access to the iTunes U Site. The Content Provider Website's presentation of access to the iTunes U Site shall be subject to Apple approval, which shall not be unreasonably withheld.

**2. LICENSE GRANTS.**

2.1 **Content.** Content Provider hereby grants to Apple a nonexclusive, non-transferable, non-sublicenseable, revocable, royalty-free right and license to use, reproduce, modify the format and display of Content (not the substance of any Content), distribute, transmit, perform and display Content on the iTunes U Site and Public Content on the iTunes Store throughout the world, in whole or in part, by any means now known or hereafter developed (such as, but not limited to, websites and electronic downloads), for the purposes consistent with this Agreement. In order to ensure the high-quality delivery of Content to end-users, Content Provider agrees that Apple may store Content on Apple's servers and consents to such storage. For the avoidance of doubt, Apple shall not charge the user for the download of any Content made available on the iTunes U Site or the iTunes Store pursuant to this Agreement.

2.2 **Marketing.** Apple shall have the royalty-free right to use, reproduce, distribute and display the Public Content throughout the world, by any means now known or hereafter developed, for promotional and marketing purposes to demonstrate the iTunes U Site and Apple technology (i) on the iTunes U Site, iTunes Store or any Apple websites, and (ii) subject to Content Provider's written approval (in the form of a

confirming email), not to be unreasonably withheld or delayed, in Apple marketing collateral, at Apple sponsored venues and events, and for any other similar lawful purpose.

**2.3 Apple Tools.** To the extent that Apple provides Content Provider with Apple Tools, Apple hereby grants Content Provider a nonexclusive, royalty-free, non-transferable right and license during the term of this Agreement to internally use, reproduce and distribute the Apple Tools within Content Provider for the sole purpose of implementing a Content Provider-branded site for iTunes U; provided, however, that if an Apple Tool is accompanied by its own set of licensing terms (e.g. sample code license), then those specific licensing terms shall govern Content Provider's use of that Apple Tool.

**2.4 Ownership Rights.** As between the parties, Content Provider will be responsible, with Apple's assistance through providing guidelines and templates, for the design of the iTunes U Site. Content Provider shall follow Apple's guidelines and templates in the design of the iTunes U Site. In the event Content Provider does not comply with such guidelines and templates, Apple may request Content Provider make any necessary changes. Content Provider must comply with such requested changes within fifteen (15) days. Except for Content Provider's or third party pre-existing rights in uploaded Content, Apple retains all ownership rights, title and interest in and to the Apple Tools, the iTunes U Site and the iTunes Store, including without limitation all graphical designs, names, icons, user interfaces and other design elements, and the selection, ordering and arrangement of materials therein and the "look and feel" thereof.

### **3. SPECIAL TERMS.**

**3.1 Uploading of Content to the iTunes U Site.** Content Provider shall be responsible for uploading Content to the iTunes U Site and for obtaining all necessary third party permissions or licenses for uploading the Content to the extent Content Provider does not own the Content in question. Content Provider shall upload and update Content as reasonably necessary. Apple shall have the right to remove any Content at any time, in its sole discretion (e.g. for reasons including, but not limited to, copyright infringement claims, content files causing distribution of viruses, etc.). In the event that Apple removes any Content, it shall use its commercially reasonable efforts to notify the Content Provider via email within ten (10) days of doing so. Apple shall have the right to revise or update the look and feel of the iTunes U Site from time to time, in its sole discretion.

**3.2 Limitations on Storage/Usage.** Content Provider may store up to 500GB of Content on the iTunes U Site. In the event that Content Provider utilizes excessive or unreasonable resources (e.g., storage or bandwidth) in connection with the iTunes U Site, Apple shall have the right to take all necessary steps to reduce the resources used, including but not limited to removing Content and denying access to the iTunes U Site. In the event that Apple takes steps to reduce the resources, it shall use its commercially reasonable efforts to notify the Content Provider via email within ten (10) days of doing so.

**3.3 Maintenance.** Apple shall from time to time be required to perform maintenance on the iTunes U Site. Apple shall use its reasonable commercial efforts to notify Content

Provider via email at least three (3) days in advance of any scheduled maintenance on the iTunes U Site. Apple shall use its reasonable commercial efforts to notify Content Provider via email in advance of any unscheduled or emergency maintenance.

### **4. TRADEMARKS AND TRADE NAMES.**

**4.1 License from Content Provider.** During the term of this Agreement, Content Provider grants to Apple the right to use the Marks, solely in connection with the exercise of Apple's rights under Sections 2.1 and 2.2 and subject to any guidelines that Content Provider may furnish to Apple.

**4.2 License from Apple.** During the term of this Agreement, and subject to the Apple Trademark Guidelines which may be found at [www.apple.com/legal/trademark/guidelinesfor3rdparties.html](http://www.apple.com/legal/trademark/guidelinesfor3rdparties.html) as may be amended from time to time, Apple grants Content Provider a non-exclusive, nontransferable, non-sublicenseable, revocable, royalty-free license to use and display the iTunes Logo on the Content Provider Website in connection with the marketing of the iTunes U Site, provided that any use or display of the iTunes Logo must be pre-approved in writing by Apple.

### **5. REPRESENTATIONS AND WARRANTIES; INDEMNITY.**

#### **5.1 Representations and Warranties.**

(a) Content Provider represents and warrants that: (i) it has the full power and authority to enter into this Agreement and to grant Apple the rights granted herein; (ii) it has complied and shall continue to comply with all legislation, rules and regulations regarding Content; and (iii) it will use secure methods to grant access to Private Content for those authorized to access Private Content according to Section 1.7, where such methods are no less secure than the methods Content Provider typically uses to protect its own highly confidential data, and in any event no less secure than methods generally accepted and reasonably used in the field of higher education to protect highly confidential data. Content Provider further represents and warrants that to the best of its knowledge: (i) it is the sole owner of the Content or has been otherwise authorized by the owner of the Content to use the Content as contemplated herein, and has secured all necessary licenses, consents and authorizations with respect to use of Content and all elements thereof to the full extent contemplated herein; and (ii) no part of Content violates or infringes upon the patent rights, copyrights, trade secrets, trademarks or constitutes defamation, invasion of privacy, or the violation of any right of publicity or other rights of any person or entity.

(b) THE APPLE TOOLS, ITUNES U SITE, ITUNES STORE AND ALL PRODUCTS AND SERVICES PROVIDED BY APPLE PURSUANT TO THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS. APPLE DISCLAIMS, AND CONTENT PROVIDER HEREBY WAIVES, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. APPLE MAKES NO REPRESENTATIONS OR WARRANTIES IN CONNECTION WITH (I) THE SECURITY OF OR ACCESSIBILITY TO THE

ITUNES U SITE OR ITUNES STORE; (II) THE SECURITY OF OR ACCESS TO CONTENT; OR (III) THE USE OR INABILITY TO USE THE APPLE TOOLS. Apple shall not be responsible for providing any digital rights management (DRM) solutions or any other protection for Content. Apple shall not be responsible for providing any technical or customer support.

**5.2 Indemnity.** The Government agrees to promptly consider and adjudicate any and all claims which may arise from this Agreement resulting from the actions of the Government, duly authorized representatives, or contractors of the Government, and to pay for any damage or injury as may be required by Federal law. Such adjudication will be pursued under the Federal Tort Claims Act, 28 U.S.C. Section 2671 et seq., the Federal Employees Compensation Act, 5 U.S.C. Section 8101 et seq., or such other legal authority as may be pertinent.

#### **6. CONFIDENTIALITY AND NON-DISCLOSURE.**

To the extent permitted by law, the parties each agree to treat all Information as confidential and proprietary information. The obligations with respect to Information shall not apply to Information (i) that is independently developed by the party receiving Information, or which is lawfully received free of restriction from another source having the right to so furnish such Information; (ii) after it has generally become available to the public without breach of this Agreement or other wrongful action or omission by the other party; (iii) which at the time of disclosure was known to the disclosing party to be free of restriction, as evidenced by documentation in its possession; (iv) which the party who has disclosed Information to the other party agrees in writing to be free of such restrictions; or (v) which is required by law or court order to be disclosed, provided that the receiving party make reasonable efforts to give the disclosing party notice of such requirement prior to any such disclosure and take reasonable steps to obtain protective treatment of the Information.

#### **7. LIMITATION OF LIABILITY.**

EXCEPT IN CONNECTION WITH INDEMNITY OBLIGATIONS PURSUANT TO SECTION 5.2, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOST PROFITS, LOST BUSINESS OPPORTUNITY, LOST DATA, INTERRUPTION OF BUSINESS, COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, OR FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED, AND WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY (INCLUDING BUT NOT LIMITED TO APPLE'S MODIFICATION OR DESTRUCTION OF CONTENT), AND, TO THE EXTENT PERMITTED BY LAW, APPLE'S ENTIRE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT AND CONTENT PROVIDER'S USE OF THE ITUNES U SITE SHALL BE LIMITED TO FIFTY DOLLARS (\$50.00). THE LIMITS SET FORTH IN THIS SECTION WILL APPLY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION OF LIABILITY IN SECTION 7 DOES NOT

APPLY TO PERSONAL INJURY OR TANGIBLE PROPERTY DAMAGE.

#### **8. TERM, RENEWAL AND TERMINATION.**

**8.1 Term and Termination.** The initial term of this Agreement shall commence upon the Effective Date of this Agreement and continue for a period of one (1) year after Effective Date. Thereafter, this Agreement will automatically renew for one (1) year terms until either party terminates (for any reason, including for convenience) by giving no less than thirty (30) days prior written notice. During the initial term, each party may terminate this Agreement for any reason (including for convenience) upon sixty (60) days prior written notice. In the event of a party's material breach of this Agreement, the other party may terminate upon fifteen (15) days prior written notice.

**8.2 Effect of Termination.** Upon the expiration or termination of this Agreement, each party shall promptly return all information, documents, manuals and other materials belonging to the other party except as otherwise provided in this Agreement. Notwithstanding anything to the contrary, Apple shall not be required to destroy any marketing collateral (if any) approved by Content Provider pursuant to Section 2.2(ii) or any other product that contains any Content and shall be allowed to exhaust any such remaining collateral or product within its ordinary course of business. Sections 1, 2.4, 5, 6, 7, 8.2, and 9 shall survive the expiration, termination or cancellation of this Agreement.

#### **9. GENERAL PROVISIONS.**

**9.1 Nonassignment/Binding Agreement.** Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Content Provider, in whole or in part, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of Apple, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

**9.2 Taxes.** Content Provider, except when tax exempted, will pay all taxes and duties, if any, payable based on its use of the iTunes U Site and any services provided by Apple under this Agreement. Proof of Content Provider's tax exempt status must be on file at Apple.

**9.3 Independent Contractors.** The relationship of the parties under this Agreement is that of independent contractors. Neither party will be deemed to be an employee, agent, partner or legal representative of the other for any purpose and neither will have any right, power or authority to create any obligation or responsibility on behalf of the other.

**9.4 Notices.** Except as otherwise provided in this Agreement, any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth in the preamble or signature line to this

Agreement. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

**9.5 Force Majeure.** Neither party will be liable to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquake, fire and explosions, but the inability to meet financial obligations is expressly excluded.

**9.6 Waiver.** Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

**9.7 Severability.** If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

**9.8 Integration.** This Agreement (including the Exhibits hereto) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. This Agreement may not be amended, except by a writing signed by both parties.

**9.9 Press Release.** Neither party shall make or issue any public statement or press release regarding this Agreement or its subject matter without prior written approval from the other party.

**9.10 Counterparts.** This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

**9.11 Governing Law.** To the extent permitted by law, this Agreement will be governed by and interpreted and enforced in accordance with the laws of the United States of America. In the absence of applicable federal law, (i) this Agreement will be interpreted and construed under the laws of the State of

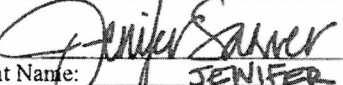
California, without giving regard to the conflicts of laws principles of the state or province whose law applies, and (ii) all disputes arising out of this Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date both parties have signed below.

APPLE, INC.

By:   
Print Name: Derek Antrim  
Title: Contracts Specialist  
Date: 12/1/08

U.S. DEPARTMENT OF COMMERCE

By:   
Print Name: JENIFER SALMER  
Title: DEPUTY DIRECTOR OF PUBLIC AFFAIRS  
Date: 11/17/08